

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

KENNETH CAIN

VS.

WAL-MART STORES TEXAS, LLC.,

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CIVIL ACTION NO.

DEFENDANT DEMANDS A JURY

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT COURT:

COMES NOW, Defendant WAL-MART STORES TEXAS, LLC (“Walmart”) and files this Notice of Removal, pursuant to 28 U.S.C. §§ 1441 and 1446, removing the above-captioned case from the 149TH Judicial District Court, Brazoria County, Texas, to the United States District Court for the Southern District of Texas, Galveston Division.

**I.
RELEVANT FACTS**

1. Plaintiff, Kenneth Cain, claims he tripped and fell due to an alleged dangerous condition on the floor, landing forcefully on the ground and sustained severe and extensive injuries to his body at Wal-Mart Supercenter store #3510 on April 26, 2020. *See* Pl.’s Orig. Pet. (Ex. A) at § V. Plaintiff asserts claims of premises liability, negligence and gross negligence. *See id.* at § VI. Plaintiff’s lawsuit expressly alleges that she is seeking damages of between \$200,000.00 and \$1,000,000.00. *See id.* at § X.

2. Plaintiff served Walmart with his Original Petition on January 12, 2021.

**II.
THE PARTIES**

3. Plaintiff Kenneth Cain pleaded that he resides in Potter County, Texas. *See* Ex. A at § II. As such, Plaintiff is a citizen of the State of Texas.

4. Defendant Wal-Mart Stores Texas, LLC is a Delaware limited liability company, and is an indirectly, wholly-owned subsidiary of Walmart Inc. The sole member of Wal-Mart Stores Texas, L.L.C. is Wal-Mart Real Estate Business Trust. The sole unit holder of Wal-Mart Real Estate Business Trust is Wal-Mart Property Co., which is a wholly owned subsidiary of Wal-Mart Stores East, L.P. Wal-Mart Stores East, L.P. is a Delaware limited partnership, of which WSE Management, L.L.C. is the general partner and WSE Investment, L.L.C. is the limited partner. The sole member of WSE Management, L.L.C. and WSE Investment, L.L.C. is Wal-Mart Stores East, L.L.C. (f/k/a Wal-Mart Stores East, Inc.), whose parent company is Walmart Inc. The principal place of business of Wal-Mart Stores Texas, L.L.C. is Bentonville, Arkansas. Walmart Inc. is a Delaware corporation with its principal place of business in Arkansas. Consequently, Walmart is a citizen of the States of Arkansas and Delaware.

III. BASIS FOR REMOVAL

5. Walmart removes this case to federal court because there is complete diversity of citizenship between the parties and the amount in controversy is greater than \$75,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(a).

A. There is complete diversity of citizenship.

6. There is complete diversity of citizenship, *see* 28 U.S.C. §§ 1332, 1441, between the Texas Plaintiff and the out-of-state defendant, Walmart, which is a citizen of Delaware and Arkansas.

B. The amount in controversy requirement is met.

7. A removing party may establish that the amount in controversy exceeds \$75,000 by showing the non-removing party explicitly sought damages over \$75,000. *See Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d 880, 881 (5th Cir. 2000). Here, Plaintiff's lawsuit expressly pleaded

that he seeks monetary relief from his lawsuit of between \$200,000.00 and \$1,000,000.00. *See* Ex. A at § X.

C. This removal is timely and venue is proper.

8. This Notice of Removal is being filed within 30 days of service of Plaintiff's lawsuit on Walmart, and within one year of the commencement of this action. It is therefore timely. Venue is proper in this District under 28 U.S.C. § 1441(a) because the state court where the action is pending is in this District.

D. Procedural requirements for removal are satisfied

9. Upon filing of this Notice of Removal of the cause, Walmart gave written notice of the filing to Plaintiff and his counsel as required by law. A copy of this Notice is also being filed with the Clerk of the Court of the 149th Judicial District Court, Brazoria, Texas, where this cause was originally filed. A copy of all processes, pleadings, and orders has been filed separately with this Court pursuant to 28 U.S.C. § 1446(a).

**IV.
CONCLUSION AND PRAYER**

10. Based on the foregoing, Walmart has established that the amount in controversy exceeds \$75,000.00 and that diversity of citizenship exists between the parties in this case. Therefore, removal is proper in this case.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT,
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing instrument has been sent to all interested counsel of record in accordance with the TEXAS RULES OF CIVIL PROCEDURE on this 9th day of February 2021.

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/s/ John A. Ramirez
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